IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NOS. 250 AND 251 OF 2004

Natha Arjun Narvekar,
major of age, r/o
Valsi, Bicholim, Goa. ... Petitioner.

Versus

1. Shantadurga Sangodkarin
Mahajan consstituted
under provisions of
Regulamento de
Mazania represented by
its Attorney Shri Dharmu
Pandarinath Sangodkar,
r/o Parra, Bardez, Goa,

2. Shri Vinayak Govind Thakur,
age 43 years, and his wife

3. Smt. Vandana Vinayak Thakur,
aged 35 years, both r/o
Bicholim, Goa, and

4. The Comunidade of Bardez,
Bicholim, Goa. ... Respondents.

Mr. V. Menezes, advocate for the petitioner.

Mr. S. D. Lotlikar, Senior Advocate with Mr. R. Sardessai, advocate for the respondents.

CORAM : B. H. MARLAPALLE, J.

DATE : 1st October, 2004.

ORAL ORDER

Both these petitions can be disposed of by a common Order as the parties inter se are the same and the petitions arise from the pending proceedings before the lower Appellate Court i.e. Regular Civil Appeal No.101/2001.

2. Special Civil Suit No.31/87 came to be decided in favour of the plaintiff and the present petitioner was

impleaded as defendant no.4. He had filed written statement in 1992 originally and subsequently in 1999 after the plaint was allowed to be amended. The suit was decreed on 29th December, 2000 and being aggrieved by the same, the present petitioner, defendant no.4, has filed Regular Civil Appeal No. 101/2001.

3. In the said appeal an application for amendment came to be filed and it was rejected by the learned ad-hoc Additional District Judge (Fast Track Court) on 30th April, 2004. The same Order has been challenged in Writ Petition No.251/2004. The petitioner had also filed yet another application in Regular Civil Appeal No.101/2001 for bringing on record some additional documents and that application was rejected by an Order dated 30th April, 2004, by the lower Appellate Court. The said Order is the subject-matter of challenge in Writ Petition No. 250 of 2004.

4. There is no doubt that in a pending appeal the appellant should be allowed to bring on record the subsequent event and it is for the Appellate Court whether to consider the same as being relevant or otherwise. It appears that in the application for amendment most of the events were not the events which had taken place after the suit was decreed, except the contents of para 15 of the schedule of amendment annexed to the application submitted by the

petitioner/appellant for amendment. Even these events could have been proved by bringing on record a certified true copy of the application dated 15th March, 2004 and the order passed by the lower Appellate Court thereon on 16th March, 2004. If the petitioner applies to the lower Appellate Court to bring these documents on record, interests of justice would be met.

5. In the application submitted to bring on record certain documents of the period subsequent to the date of decree, it is noted that most of the documents were for the earlier period. Nevertheless, it appears that there are some receipts which pertain to the period from 11th May, 2002, onwards, as was mentioned in clause 6 of para 1 of the said application. No prejudice is likely to be caused to the present respondents if these receipts are allowed to be placed on record and undoubtedly, it would be for the lower Appellate Court to consider the issue whether they are relevant or otherwise.

6. Under the circumstances, both these petitions are disposed of by allowing the petitioner to bring on record the receipts dated 11th May, 2002, 20th April, 2002 and other receipts upto 14th May, 2003. The petitioner is also allowed to bring on record a certified true copy of the application dated 15th March, 2004 purportedly submitted in Regular Civil

Appeal No.25 of 2001 and the order passed thereon on 16th March, 2004.

B. H. MARLAPALLE, J.

mc.